

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA)	Subcases 01-4, et al. (see of 33 subcases
)	attached)
Case No. 39576)	
)	
)	ORDER VACATING TRIAL
)	SCHEDULES,
)	ORDER DENYING MOTIONS and
)	ORDER
)	SETTING DEADLINES AND HEARING

Ground Water Districts’ Motion to Compel Discovery

The Ground Water Districts¹ filed their *Motion to Compel Discovery; Motion to Extend Deadlines* in **31** of the above 33 subcases on August 21, 2008.

The Independent Water Users of Mud Lake, Jefferson Irrigation District, Montevue Canal Company, Mud Lake Water Users, Inc., and Producers Irrigation Company filed their *Joinder on Ground Water Districts’ Motion to Compel Discovery and Motion to Extend Deadlines* in **27** of the above 33 subcases on August 25, 2008.

The United States filed its *Response to Motion to Compel* on September 25, 2008.

Motions for Summary Judgment

The Ground Water Districts then filed their *Motion for Summary Judgment* in **29** of the above 33 subcases on August 22, 2008. The “Upper Valley Irrigators”² filed their

¹ The Ground Water Districts include: Aberdeen American Falls Groundwater District, Bingham Groundwater District, Bonneville Jefferson Groundwater District, Carey Valley Groundwater District, Jefferson Clark Groundwater District, Madison Groundwater District, Magic Valley Groundwater District and North Snake Groundwater District.

² The Upper Valley Irrigators include: Fremont Madison Irrigation District, United Canal Company and Blackfoot Irrigation Company.
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Motion in Support of Ground Water Districts' Motion for Summary Judgment in the same **29** subcases on August 26, 2008.

The City of Pocatello and the Ground Water Districts, collectively called "Groundwater Users," filed their *Joint Motion for Summary Judgment on Priority Dates* in **4** of the 33 subcases on August 22, 2008.

Claimants' Motion to Strike

The claimants³ filed a *Joint Motion to Strike* in **20** of the above 33 subcases on September 18, 2008, seeking an order striking pending *Motions for Summary Judgment by Objectors* on issues not raised by objections. The claimants lodged their *Joint Memorandum in Opposition to Motion to Compel* on September 25, 2008.

Hearing

A hearing on the *Motion to Compel Discovery; Motion to Extend Deadlines* and the *Joint Motion to Strike* was held by telephone on October 2, 2008. The following counsel appeared:

Candice M. McHugh – Ground Water Districts / Groundwater Users

Sarah A. Klahn – City of Pocatello / Groundwater Users

Jerry R. Rigby – Upper Valley Irrigators

Robert L. Harris – Independent Water Users of Mud Lake, Jefferson Irrigation District, Montevue Canal Company, Mud Lake Water Users, Inc., and Producers Irrigation Company

Roger D. Ling – A&B Irrigation District, Burley Irrigation District and Falls Irrigation District

Travis L. Thompson – A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company and Twin Falls Canal Company

W. Kent Fletcher – Minidoka Irrigation District

³ The claimants include: A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Falls Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company.
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C. Thomas Arkoosh – American Falls Reservoir District #2

David W. Gehlert – United States of America, Department of Interior, Bureau of Reclamation

David L. Negri – United States of America, Department of Interior, Bureau of Land Management

Josephine P. Beeman – Amalgamated Sugar Company

David I. Stanish – State of Idaho

Garrick L. Baxter – IDWR

Discussion

The central issue in both *Motions* is whether the Ground Water Districts, as well as the City of Pocatello, should be allowed to proceed with their *Motions for Summary Judgment* on issues not raised in their *Objections* filed as early as October 4, 2006 (e.g. subcases 01-14, 01-10225, 01-10237, 01-10238, 01-10240 and 01-10241). In those six subcases, IGWA, now the Ground Water Districts objected only to the source element: “High surface water runoff from snowmelt or rain.” As late as the Court’s September 18, 2008 *2nd Amended Trial Schedule*, the above 33 subcases were informally labeled by the Court, “source objection,” to assist the parties identify the issue.

In their *Motions for Summary Judgment*, the Ground Water Districts and the City of Pocatello raised additional issues of priority date, season of use and whether the rights exist. The claimants moved to strike the *Motions* that seek judgment upon issues not raised in any objection.⁴

The Ground Water Districts’ *Motion to Compel Discovery; Motion to Extend Deadlines* is closely tied to their *Motions for Summary Judgment* in that they seek discovery relief in light of deadlines set in the Court’s September 2, 2008 *Amended Trial Scheduling Order* and its September 18, 2008 *2nd Amended Trial Schedule*. Trial is currently set for April 8, 2009.

In order to satisfy due process and to ensure an orderly development of the subcases with their potential wide range of issues, the only viable remedy at this point is

⁴ The City of Pocatello also faces the issue of whether it may join in issues not before the Court when it was allowed to participate on March 26, 2008.

to deny the *Motion to Compel Discovery; Motion to Extend Deadlines* and the *Joint Motion to Strike*. The *Motions for Summary Judgment* are not now before the Court.

In addition, the Ground Water Districts should be provided a fair opportunity to move to amend their *Objections* and the claimants should have an equal opportunity to respond. Not only will this help clarify the issues, it will give the parties the opportunity to align themselves and the subcases according to issues and interests. In the meantime, the parties are encouraged to continue with scheduled discovery to avoid duplication and a waste of resources and time.

Order

NOW, THEREFORE, IT IS ORDERED that:

1. The Court's September 2, 2008 *Amended Trial Scheduling Order* and the September 18, 2008 *2nd Amended Trial Schedule* are **vacated**;
2. The Ground Water Districts' *Motion to Compel Discovery; Motion to Extend Deadlines* is **denied**;
3. The claimants' *Joint Motion to Strike* is **denied**;
4. The Ground Water Districts shall file any motions to amend objections they deem appropriate no later than **Thursday, October 16, 2008**;
5. The claimants and all other parties shall file responses no later than **Thursday, October 30, 2008**; and
6. A hearing on all motions to amend objections and responses thereto shall be held on **Tuesday, November 25, 2008, 10:00 a.m.** at the SRBA Courthouse, 253 3rd Avenue North, Twin Falls, Idaho.

Note: If any of the parties so choose, they may submit arguments on the matter of the City of Pocatello's participation in issues raised after March 26, 2008, when it was allowed to participate.

Pleadings in support shall be submitted no later than **Thursday, October 16, 2008**;
pleadings in opposition shall be submitted no later than **Thursday, October 30, 2008**;

the matter will be heard on **Tuesday, November 25, 2008, 10:00 a.m.** at the SRBA Courthouse, 253 3rd Avenue North, Twin Falls, Idaho.

DATED October 8, 2008.

TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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